

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

OPEN GOVERNMENT SUNSET REVIEW ACT

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of s. 24(c), Article I of the State Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

EXAMINATION AND INVESTIGATION DUTIES

The Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS) each have regulatory powers related to insurance. OIR is responsible for all activities concerning insurers and other risk-bearing entities such as licensing, solvency, rates, and policy forms.² DFS is responsible, among other duties, for the regulation of insurance representatives and other individuals who are licensed to sell insurance-type products.³

OIR conducts market conduct examinations and financial oversight examinations of authorized insurers as often as it deems necessary in order to review the insurers' affairs, records, transactions, accounting procedures, and financial condition and to ascertain compliance with the applicable provisions of the Insurance Code.⁴ These examinations scrutinize property, casualty, life, and health insurance entities.

¹ Section 119.15, F.S.

² Sections 20.121(3)(a)1. and 626.016, F.S.

³ Sections 20.121(2) and 626.016, F.S.

⁴ Sections 624.316 and 624.3161, F.S.

Rather than conduct all reviews on a calendar basis, industry problems are identified through market analysis by trending patterns and practices of consumer complaints, financial data, and other data available through market and environmental sources. Once adverse business practices are identified, specific companies, markets, or insurance products are examined.

Both OIR and DFS have the authority to conduct investigations of insurers and insurance representatives if either agency has reason to believe that the Insurance Code has been or is being violated or it receives a complaint indicating that a violation may exist.⁵

PUBLIC RECORDS EXEMPTIONS FOR EXAMINATIONS AND INVESTIGATIONS

Examination reports are confidential and exempt from public records requirements until filed.⁶ Investigation reports are confidential and exempt until the investigation has been completed or ceases to be active.⁷ Portions of the investigation report, however, may remain confidential and exempt if disclosure would:

- Jeopardize the integrity of another active investigation;
- Impair the safety and financial soundness of the licensee or affiliated party;
- Reveal personal financial information;
- Reveal the identity of a confidential source;
- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
- Reveal investigative techniques or procedures.⁸

PUBLIC RECORDS EXEMPTION UNDER REVIEW

Current law also provides a public records exemption for work papers and other information held by DFS or OIR, and work papers and other information received from another governmental entity or the National Association of Insurance Commissioners, for use by DFS or OIR in the performance of its examination or investigation duties. Such confidential and exempt information may be disclosed to:

- Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities; and
- The National Association of Insurance Commissioners.⁹

The exemption does not provide a definition of work papers, which is a broad term. In addition, the current exemptions for investigation and examination reports expire when the investigation ceases to be active or the examination report is filed whereas the work papers exemption, for those examinations and investigations, does not expire.

EFFECT OF BILL

The bill reenacts, with changes, the public records exemption under review.

The bill reorganizes the exemption, provides a definition of work papers,¹⁰ and removes superfluous language. It also clarifies that the exemption for “other information” only applies to information received

⁵ Section 624.317, F.S.

⁶ Section 624.319(3)(a), F.S.

⁷ An investigation is active while it is being conducted by DFS or OIR with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if DFS or OIR is proceeding with reasonable dispatch and has a good faith belief that action could be initiated by DFS or OIR or other administrative or law enforcement agency.

⁸ Section 624.319(3)(a), F.S.

⁹ Section 624.319(3)(b), F.S.

¹⁰ The bill defines “work papers” to mean the records of the procedures followed, the tests performed, the information obtained and the conclusions reached in an examination or investigation performed under ss. 624.316, 624.3161, 624.317, 624.318, and 624.319, F.S. Work papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation,

from another governmental entity or the National Association of Insurance Commissioners (NAIC), which is confidential or exempt when held by that entity.

The bill provides for release of work papers once an examination report is filed or an investigation is completed or ceases to be active, unless disclosure would:

- Jeopardize the integrity of another active examination or investigation;
- Impair the safety or financial soundness of the licensee, affiliated party, or insured;
- Reveal personal financial, medical, or health information;
- Reveal the identity of a confidential source;
- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual;
- Reveal examination techniques or procedures; or
- Reveal information that is confidential or exempt when held by another governmental entity or the NAIC.

C. SECTION DIRECTORY:

Section 1 amends s. 624.319, F.S., to reenact the public records exemption for work papers and other information held by DFS and OIR.

Section 2 provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 18, 2007, the Government Efficiency and Accountability Council adopted two amendments to PCB GEAC 07-15. The amendments:

- Clarify that the public records exemption for work papers only applies until the examination report is filed or until the investigation is completed or ceases to be active.
- Authorize continued protection for those portions of work papers that, if released, would jeopardize the integrity of another active investigation.